

No. 88-2018

Supreme Court, U.S.

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CLERK

In The
Supreme Court of the United States
October Term, 1989

STATE OF ILLINOIS,

Petitioner,

vs.

EDWARD RODRIGUEZ,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois
First Judicial District, Third Division

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JUNE 5, 1989
CERTIORARI GRANTED OCTOBER 30, 1989

108 p/2

TABLE OF CONTENTS

	Page
Chronological List of Relevant Docket Entries.....	1
Transcript of Proceedings, August 18, 1986.....	2
Testimony of Office James Entress	
Direct Examination	3
Cross Examination.....	25
Re-Direct Examination.....	32
Testimony of Dorothy Jackson	
Direct Examination	34
Cross Examination.....	52
Transcript of Proceedings, September 5, 1986.....	61
Testimony of Gail Fisher	
Direct Examination	62
Cross Examination.....	67
Re-Direct Examination.....	86
Transcript of Proceedings, September 17, 1986 Oral Ruling	93
Unpublished Order of the Illinois Appellate Court, First District, January 11, 1989.....	98
Order of the Illinois Supreme Court dated April 5, 1989, denying the People's Petition for Leave to Appeal.....	105
Order of the Supreme Court of the United States dated October 30, 1989, granting certiorari.....	106

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

July 27, 1985 - Complaints filed in the Circuit Court of Cook County charging Edward Rodriguez with the battery of Gail Fisher and with possession of a controlled substance.

September 11, 1985 - Preliminary hearing held.

September 27, 1985 - Information filed in the Circuit Court of Cook County charging Edward Rodriguez with possession of a controlled substance with intent to deliver and possession of cannabis.

January 22, 1986 - Motion to Quash Arrest and Suppress Evidence filed by Edward Rodriguez.

August 18, 1986 - Hearing held on Motion to Quash and Suppress.

September 5, 1986 - Hearing continued on Motion to Quash and Suppress.

September 17, 1986 - Argument of counsel heard on the Motion to Quash and Suppress. Motion granted.

October 17, 1986 - Notice of Appeal filed by the People of the State of Illinois.

January 11, 1989 - Unpublished order of the Appellate Court of Illinois, First District, Third Division, affirming the trial court filed.

April 5, 1989 - Order of the Illinois Supreme Court denying the State's Petition for Leave to Appeal.

STATE OF ILLINOIS)
COUNTY OF COOK) SS:
)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

EDWARD RODRIGUEZ,)
Petitioner,)
vs.) Indictment No.
) 85 C 10942
THE PEOPLE OF THE)
STATE OF ILLINOIS,) Before: JUDGE
Respondent.) JAMES M.
) SCHREIER
) Monday,
) August 18,
) 1986.
)

Court having reconvened pursuant to adjournment.

APPEARANCES:

MR. JAMES REILLEY and
MS. CHRISTINE CURRANS,
appeared on behalf of the Petitioner-
Defendant;

HON. RICHARD M. DALEY,
State's Attorney of Cook County, by
MR. JAMES BIGONESS,
Assistant State's Attorney,
appeared on behalf of the People;

* * *

(p. 2) JAMES ENTRESS,
called as a witness on behalf of the Petitioner-Defendant

herein, having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. REILLEY:

(p. 3) Q. Officer, will you please state your full first
and last name and spell your last name for the court
reporter?

A. James Entress. E-n-t-r-e-s-s. Star 8114, work out
of the 9th District.

Q. Officer, as of July of 1985, how long have you
been a Chicago Police officer?

A. July of '85?

Q. Yes?

A. Twelve and a half years.

Q. Now, calling your attention specifically, Officer
Entress, to July 26, 1985, were you on duty on that date,
sir?

A. Yes, sir, I was.

Q. Did you have occasion to go to the area of 3554
South Wolcott in Chicago, Cook County, Illinois on that
date?

A. Yes, sir?

Q. Will you tell his Honor, Judge Schreier, what
time you arrived at the location and why is it that you
went there?

A. We arrived there approximately 2:30 in the afternoon. A uniformed car had called for an assistance of a tact team.

Q. When you say "we" officer, can you tell us who was (p. 4) with you?

A. My partner Ricky Gutierrez.

Q. Spell the last name.

A. G-u-t-i-e-r-r-e-z. Star 7699.

Q. Plain closes [sic] or uniform on that date?

A. Plain clothes.

Q. You responded to a call from another officer, is that correct?

A. That's correct.

Q. What was the other officers name?

A. Officer Tenza. T-e-n-z-a. I believe.

Q. All right. Did you specifically speak to officer Tenza on a police radio before going there?

A. Yes, we did.

Q. Now when you arrived at 3554 South Wolcott with Officer Gutierrez was Officer Tenza already there?

A. Yes, he was.

Q. Did you go into a residence at that location?

A. Yes.

Q. And did you have a conversation with a Gail Fisher.

A. Yes, sir.

Q. How long, if you know, was officer Tenza there prior to your arrival?

(p. 5) A. I don't know.

Q. Okay. Did you speak with Gail Fisher at that point, yourself?

A. Yes, I did.

Q. Will you tell the court please what you said to Gail Fisher and what she said to you.

MR. BIGONESS: Objection your Honor. Foundation.

THE COURT: Who else was present?

MR. BIGONESS: And time, if counsel can.

MR. REILLEY: Let me with draw that.

At the time you spoke with Gail Fisher and she spoke to you, officer, can you tell us what time it was?

A. It was around 2:30 In the afternoon.

Q. On July 26, 1985?

A. Yes that's correct.

Q. Who else was presence [sic] during the conversation?

A. My partner, Officer Gutierrez, Officer Tenza, Gail Fisher, and and and Dorothy Jackson.

Q. Do you know if Dorothy Jackson is Gail Fisher's mother?

A. I believe stepmother.

Q. Stepmother? Okay.

A. I believe so.

Q. Other than those you have named, was anyone else (p. 6) present?

A. No, sir.

Q. Okay. Tell the court what you said to Gail Fisher and what she said to you or in your presence?

A. She stated to me that she - and I could see she had been the victim after battery. She stated -

Q. Tell us what she said?

A. She stated Edward Rodriguez earlier in the day had beaten her at their apartment at 3519 South California. She stated that she wanted to sign complaints. That all her clothes and her furniture were in that apartment and that she had her own key for the apartment. That she would open the door and allow us to go into arrest Eddie Rodriguez who was at the apartment at the time and she felt he was sleeping.

Q. Okay. Okay. Officer, when Gail Fisher told you that Eddie Rodriguez had been had beaten her earlier in the day can you be more specific if you recall what time she said that occurred?

A. The only thing I can remember on that, sir, is that she had said earlier in the day.

Q. Okay. Have you had a chance to refresh your memory as to the time by reading any police reports that were prepared with regard to that incident?

(p. 7) A. The only place that would show what time it was would be on the original made by officer Tenza and I really haven't reviewed that.

MR. REILLEY: Okay. May I approach the witness, Judge?

THE COURT: Yes.

MR. REILLEY: Q. Officer I'm going to show you a group of police reports which were tendered to me in discovery. And one of them appears to be authored by Officer Tenza. Let me ask you if this report I'm showing you now is the report your referring to?

MR. BIGONESS: Objection your Honor. I'm not sure what counsel is trying to do. I think he's trying to refresh this officers recollection with another officers report.

MR. REILLEY: That's right.

THE COURT: You can refresh recollection by another officers report or you can refresh recollection by someone doing a hand stand in court. Doesn't have to be his own report to refresh recollection.

MR. REILLEY: Q. Officer will you take a look at that report please?

A. Okay.

Q. First of all, the report that you're looking at, can you tell the court if you have ever seen that report (p. 8) before?

A. I seen it on that date, yes, sir.

Q. What report does that - purport to be?

A. This is an aggravated battery with the victim being Gail Fisher and the offender Edward Rodriguez from that date.

Q. Is this the report prepared by officer Tenza, to your knowledge, regarding the incident your testifying about?

A. To my know knowledge, yes, sir.

Q. In looking over the various boxes on the report. Is there any indication there as to the time that the alleged battery occurred?

MR. BIGONESS: Objection your Honor.

THE COURT: Overruled.

THE WITNESS: He has an occurrence of 26 July, '85 at 1100 hours which is 11:00 O'clock in the morning. But I don't ever remember being told that was the time.

THE COURT: So it doesn't refresh your collection?

THE WITNESS: No, it doesn't.

MR. REILLEY:

Q. You only recall that the victim Miss Fisher told you it was earlier in the day, July 26, 1985?

A. Yes, sir.

(p. 9) Q. Do you know when she called the police or if she - strike that.

Do you know if she called the police?

A. I really don't know who called the police.

Q. Do you know when the police were called?

A. No, sir.

Q. When you received the radio communication from Officer Tenza, approximately what time of the day was it?

A. It was around 2:30 in the afternoon.

Q. Okay. And you went then to the Wolcott address and arrived there how soon after the phone call or the radio communication?

A. We were there within five minutes when he called for us.

Q. Did you ask Gail Fisher on that date, as you were speaking to her, where she was living?

MR. BIGONESS: Objection. At what point.

MR. REILLEY:

Q. The time you were speaking to her in my earlier question you were speaking with Gail Fisher at the residence at 3554 South Wolcott with your partner, Officer Gutierrez present, Gail Fisher present, yourself present officer Tenza present and Miss Jackson present. Do you recall that conversation?

(p. 10) A. I recall the conversation, yes, sir.

Q. During that conversation, did you ask Gail Fisher where she was residing?

A. I had asked her - she stated where this occurrence - where this had occurred at 3519 South California. She further related to me stated to me that she - all her

property was there and that she had been living there. I didn't go into specifics with her as if she had just moved out or anything like that. But she stated to me she had been living there and that she has the key, her own key and that all her property was at that apartment.

Q. Officer, do you remember testifying at a preliminary hearing regarding people of State of Illinois versus Edward Rodriguez before the Honorable Judge John Morrissey on September 11 1985?

A. Yes, sir.

Q. Do you recall being asked certain questions by the state's attorney and myself and giving certain answers?

A. I remember to the best of my knowledge. The little what I can remember.

MR. REILLEY: Page sixteen, Counsel.

Do you remember me asking you this question during that hearing, page sixteen, line twelve.

(p. 11) "Q. Did Gail Fisher tell you she lived at 3510 South California?

A. She stated she used to live there.

MR. BIGONESS: Objection impeaching, Your Honor. That's exactly what he said. She had been living there.

MR. REILLEY: That's not what he said.

THE COURT: Overruled.

MR. REILLEY:

Q. Do you remember giving that answer to that question, Officer?

A. Yes, sir.

Q. Now, was that the answer that you gave that day that she stated she used to live there?

A. To the best of my recollect, yes.

Q. Let me ask you this, officer.

On July 26, 1985, was it your impression that Gail Fisher no longer lived at 3510 South California?

A. No.

Q. It was not?

A. No.

Q. It was your impression she did or didn't live there?

(p. 12) A. It was my impression she lived there but she wasn't there that day that she had - she was there that day earlier and that's where the offense had occurred. So, my feeling was that she was still living there or she wouldn't have been there when the offense had occurred.

Q. Even though she told you she used to live there, is that right?

A. She stated she had been living there.

Q. Well, your answer was she used to live there, didn't did she say she used to live there or she had been living there. What did she say?

A. To the best of my recollection, she stated that she had been living there.

Q. Now that's your recollection today on August 18, 1986, is that correct?

A. That's correct.

Q. Was your recollection better on September 11, 1985 of this incident or worse?

A. It could conceivably be better.

Q. Did you have a conversation with the lady who you have identified as Miss Jackson at the same time and place?

A. Yes, sir.

Q. Did Miss Jackson who you have described as her stepmother, tell you that Gail Fisher had been living (p. 13) there for at least three or four weeks prior to July 26, 1985?

A. No, sir she never told me that.

Q. She never told you that? Okay. How long were you at 3554 South Wolcott before you left and went to another location?

A. Approximately five, ten minutes.

Q. Okay. Did you eventually go over to an address of 3519 South California?

A. Yes, sir?

Q. Prior to going to that address, did you have in your possession either a search warrant or an arrest warrant to either arrest or search the person and apartment at 3519 South California?

A. No, sir.

Q. Did you have a complaint signed by any victim of any alleged battery prior to going to 3519 South California?

A. No, sir.

Q. You went over to that address and you were there with officer Gutierrez and Officer Tenza, is that correct, sir?

A. We also had Miss Fisher and Miss Jackson with us.

Q. Okay. So there were five of you?

(p. 14) A. That's correct.

Q. How did you get into the apartment at 3519 South California?

A. Gail Fisher walked up to the door opened the door with a key, opened the door and allowed us entrance into the apartment.

Q. Let me go back to the conversation that you were having at 3554 south Wolcott with Gail Fisher and the others who you previously stated were present.

Other than what you have already stated was said at that time, was there anything else said by Gail Fisher concerning the incident that occurred earlier that day?

A. Concerning the battery?

Q. Yes, sir.

A. Not that I can recall.

Q. All right. Did you -

A. Oh, yes, there was.

Q. There was? Please tell us what it was?

A. She had stated he had kept her in the apartment. I do not remember how long, but he refused to allow her to leave the apartment.

Q. Your [sic] referring to July 26, 85?

A. Yes, sir.

(p. 15) Q. Okay. Did you testify earlier that she said that she thought Mr. Rodriguez was at home sleeping?

A. Yes, sir.

Q. Okay. You did say that. All right.

When you went to the location, did you check with the landlord to find out whose apartment it was?

A. No, sir. I did not.

Q. Did you ever determine prior to entering the apartment that the apartment was in the name of Edward Rodriguez?

A. No, sir.

Q. What was your purpose, officer, in going to the 3519 South California address on July 26, 1985?

A. To arrest Edward Rodriguez for an aggravated battery.

Q. That's the same aggravated battery that you had no complaint signed, is that correct?

A. At that time, yes, sir.

Q. All right. Now, this was 2:30 In the afternoon, is that correct?

A. Approximately.

Q. What day of the we can [sic] was it?

A. I cannot recall.

Q. Was it during the week or was it on the weekend?

(p. 16) A. I can not recall.

Q. If I can refresh your memory as to that, that it was on a Friday, July 26, 1985, would that refresh your recollection?

A. If you say so.

Q. Now, July 26th is not a court holiday, is it?

A. Not to my knowledge.

Q. Being an officer for twelve and a half years, you're aware that there's a lot of judges in this building and in various other buildings throughout the Cook County area, is that correct?

A. Yes, sir.

Q. All right. Did you attempt, officer, to go have a complaint signed for aggravated battery or battery or

obtain an arrest warrant from any judge in the circuit court of Cook County prior to going over there?

A. No, sir.

Q. So, it's your testimony that Gail Fisher opened the door with a key she happened to have, is that correct?

A. She stated it was her key.

Q. Now, answer my question.

Did she open the door with a key that she happened to have? Did she put the key in the lock?

A. Yes, sir.

(p. 17) Q. And turn it?

A. Yes.

Q. The door was locked when you got there, isn't that true?

A. Yes.

Q. Okay. So you didn't have to kick the door down or anything? She opened it up with the key?

A. That's correct.

Q. Okay. Now, when the door was opened, what did you do?

A. We entered the apartment.

Q. Did you knock before you had Gail Fisher open the door with the key she had?

A. No, sir.

Q. Did you ring the door bell, if there was one?

A. No, sir.

Q. When the door was opened, who entered first, if you recall?

A. I did.

Q. Before entering, did you call out the name Ed Rodriguez?

A. No, sir.

Q. did you call out anything?

A. No, sir.

(p. 18) Q. When you went inside, what room did you enter into?

A. The first room is technically, I guess it's a living room but they had a bed in the middle of it.

Q. That's the room you entered as you walk in the door?

A. Yes, sir.

Q. You were already over the threshold and into the apartment, is that correct?

A. That's correct.

Q. Did you see any persons in there?

A. No, sir.

Q. Did you call out anything?

A. No, sir.

Q. Were the other officers namely Gutierrez and Tenza right behind you?

A. No, sir. Officer Tenza was securing the rear exits. He wasn't - he didn't go in when my partner and I went in.

Q. You and Officer Gutierrez went?

A. That's correct.

Q. How about Gail Fisher and Miss Jackson?

A. No. When she opened the door, she returned to the police vehicle.

(p. 19) Q. Now, you went into the living room area and your partner Gutierrez did. Did you say anything at that point did you call out any names?

A. No, sir.

Q. Where's the next place you went?

A. Right into a bedroom which is to the left of that room.

Q. Did you see Mr. Rodriguez in the bedroom?

A. Yes, sir.

Q. He was sleeping?

A. Yes, sir.

Q. How long were you in the apartment before you woke him up?

A. Probably anywhere from a half a minute to a minute and a half.

Q. Half a minute to a minute and half? When you walked in the bedroom, did you have to wake him up by yelling or shaking him, calling out his name?

A. Yes, sir.

Q. In otherwords, he didn't hear you, apparently, that correct?

A. No, he did not.

Q. Isn't it a fact, officer that prior to waking him up, during that half a minute to minute and a half, that (p. 20) you and or your partner, had already looked through various items in various rooms and had seized what the state would seek to introduce into evidence against him in this proceeding, is that true?

A. We had - what do you mean by look through? You mean like physically handling?

Q. Physically handling, opening things up, retrieving things with your hands. Did you do any of that?

A. No, sir.

Q. Did you pick up any items which the state seeks to introduce into evidence, before you work [sic] up Mr. Rodriguez?

A. No, sir.

Q. Did you look in any brief cases in the bedroom?

A. Yes, sir we looked into two open brief cases.

Q. Okay. Was that before or after you work [sic] up Mr. Rodriguez?

A. That was during the course of waking him up.

Q. You were looking in the brief case?

A. Yes. They were right at the foot of bed.

Q. Again you didn't have a search warrant to search that room or the contents of the room, did you?

A. No, sir.

Q. You found various items throughout the house that (p. 21) the state seeks to introduce into evidence namely control substance and or cannabis sativa, is that correct?

A. Yes.

Q. Find some in the bedroom?

A. Yes, sir.

Q. Without getting specific where they were, you found some in the living room?

A. Yes, sir.

MR. REILLEY: May I just have a moment, Judge?

THE COURT: Yes.

MR. REILLEY:

Q. Officer, as you entered the apartment, that is you and officer Gutierrez, you were in that living room where you have described a bed, you walked through that area prior to going into the bedroom, is that correct, sir?

A. That's correct.

Q. And is it a fact, that you saw some items perhaps some Tupperware, in the living room which you looked into prior to going into the bedroom, is that true?

A. That's correct.

Q. You didn't expect to find Mr. Rodriguez in the Tupperware, did you?

A. No, sir.

THE COURT: Did you say you looked through the (p. 22) Tupperware.

THE WITNESS: The Tupperware was in plain and open view. It wasn't covered. We have - we had to walk past it to get into the bedroom.

THE COURT: All right.

MR. REILLEY:

Q. The point is, you did look into that - what you have described as being in plain and open view prior to going in to arrest Mr. Rodriguez, is that right?

A. Yes, sir, I did.

Q. And you went into the bedroom and then you look into these two attache cases, is that correct?

A. That's correct.

Q. That's again, before you woke up the defendant?

A. That's during the course of waking him up. We observed it - two attache cases at the side of the bed and as were reaching over waking him up, we can - we could look right into the attache case.

Q. They open also just like the Tupperware?

A. Yes, sir.

Q. Going back to your conversation with Miss Fisher, at the other address on Wolcott, you have related to the best of your recollection, everything she said to you and you said to her about this incident, is that correct?

(p. 23) A. During the conversation about the - about arresting Ed Rodriguez, I had stated to her that we would only go in and lock him up if she was sure that she wanted to press charges on him. She was a little hesitant it seemed to me about signing complaints. So then, I had recalled a year earlier a conversation with someone concerning an Edward Rodriguez that -

Q. Who was the someone you had the conversation with a year earlier?

A. I cannot remember.

Q. Then I'm going to ask you this question and please answer my question -

MR. BIGONESS: I'll ask the witness be allowed to answer.

MR. REILLEY: I'm entitled to have an answer to my question. This is direct examination. Not responsive.

THE COURT: Ask the other - another question Mr. Reilley. If you want to have him finish any answer, you can on your examination.

MR. REILLEY:

Q. My question, officer, was relating the conversation that you had with Gail Fisher. You were stating that you felt she was reluctant or she said she wasn't sure she wanted to sign a complaint, is that part of (p. 24) the conversation?

A. She was little hesitant, yes, sir.

Q. All right. Besides what you determined to be her hesitancy, did she say anything else to you? That's my question, her words?

A. I'm getting to that. That's what - what the conversation - you wanted the conversation.

Q. Tell me what she said. Just what she said. That's my question.

A. How can I give you what she said until I tell you what I asked her.

Q. Tell me what you asked her?

A. Okay. I asked her if Edward Rodriguez dealt in narcotics.

Q. Okay. You asked her that?

A. Yes.

Q. What did she say?

A. She didn't answer. And I said well if you're afraid, of us going in to your apartment and locking him up, then you tell us now and we won't go in there. And at this point, she thought for a few seconds and then she said no. She's says, "I want to sign complaints I want to go to court. I will open the door for you."

Q. Okay. Then when you asked her about dealing in (p. 25) narcotics she didn't answer your question, is that correct?

A. That's correct.

Q. All right. And she said she wanted to sign a complaint?

A. Yes, she did.

Q. And to go to court, is that what she said?

A. Yes, she did.

Q. Did you take her over to the state's attorney's office, draw up a complaint, have her sign it in front of a judge before you went to the apartment?

A. No, sir.

Q. You weren't told by the way that Mr. Rodriguez was about to leave the country, were you?

A. No, sir.

Q. Okay. Did you take - Gail Fisher to the hospital before you went over to the apartment where you arrested the defendant? Yes or no?

A. No, sir.

THE COURT: Any further questions Mr. Reilley?

MR. REILLEY: Pardon me?

THE COURT: Any further questions.

MR. REILLEY: I believe I have nothing else at this time.

THE COURT: All right. Mr. BIGONESS.

(p. 26) CROSS EXAMINATION

BY MR. BIGONESS:

Q. Now, officer, you received a call from a beat car requesting assistance on July 26, 1985, at about 2:30 In the afternoon, correct?

A. That's correct.

Q. And the location of that call was 3554 South Wolcott, correct?

A. Yes, sir.

Q. You proceeded to that location where you met Officer Tenza, Gail Fisher and Gail Fisher's mother, Dorothy Jackson, correct?

A. Yes.

Q. And you had a conversation with Miss Fisher, at that time, correct?

A. That's correct.

Q. And Miss Fisher told you that she had been living at 3519 South California, with Edward Rodriguez, correct?

A. Yes, sir.

Q. She also told you that her clothes and furniture were still in the apartment at the time she was speaking with you, correct?

A. That's correct.

Q. She - did she at any time refer to the apartment (p. 27) at 3519 South California as his apartment?

A. My recollection was she used their apartment and our apartment.

Q. So, at no time did she say his apartment. It was always in terms of our apartment or their apartment meaning -

A. That's correct.

Q. Okay. Now, you had a - had a short conversation with Miss Fisher at that location at 3554 South Wolcott at that time, correct?

A. Yes, sir.

Q. And after speaking with her, you and officer Gutierrez, officer Tenza, Miss Jackson and Miss Fisher all proceeded to 3519 South California, correct?

A. That's correct.

Q. Now, when you had that conversation with Miss Fisher, she told you that she had a key to their apartment, correct?

A. That's correct.

Q. Now, you testified that she initially showed some hesitancy to he [sic] sign a complaint against - well strike that.

You said that she showed some hesitancy. Hesitancy to sign a complaint or hesitancy to open the (p. 28) door?

A. She appeared to be afraid, intimidated by the offender. And I didn't know whether she was afraid to

open the door or whether she was afraid what would happen if she signed a complaint on him.

Q. All right. Now at any time did you or your brother officers or Miss Jackson for that matter ever pressure - exert any type of pressure on Miss Fisher to agree to sign a complaint or to open the door?

A. No, sir.

Q. And you testified that after you spoke with Miss Fisher, you were left with the impression that Miss Fisher lived there occasionally, were those your words or lived there -

A. She - from the conversation she lived there. I don't know whether she was living there, you know, every day, but she kept using the word "our" and "their" apartment. And she stated that this was her key.

Q. And after this conversation you went to 3519 South California where Miss Fisher opened the front door to the apartment at that location, correct?

A. Yes, sir.

Q. And you were present when she opened the front door, correct?

(p. 29) A. That's correct.

Q. And after she opened the front door she went - she left the area of the door, went back to the car and you entered the premises?

A. Yes, sir.

Q. And as you entered, you noticed something unusual in the living room, correct?

A. Yes, sir.

Q. Now, you referred in your direct testimony to some Tupperware. That Tupperware had lids on it when you saw it for the first time or not?

A. No, sir, it did not.

Q. And after you went through the living room - by the way, did you notice anything else besides the Tupperware?

A. There was drug paraphernalia like scales and pipes laying scattered on the bed. On the table next to the Tupperware was a large scale.

Q. Did you notice anything inside the Tupperware?

A. Yes, sir.

Q. What was that?

A. A white powder that I suspected to be cocaine.

Q. Had you ever seen cocaine before this date?

A. Yes.

(p. 30) Q. Approximately how many times?

A. Hundreds.

Q. And this had the same appearance as the cocaine you observed on other occasions, correct?

A. Yes, sir.

Q. And the cocaine - white powder on other occasions turned out to be cocaine, isn't that correct?

A. That's correct.

Q. After you left out of the living room, you then walked into which room?

A. Walked into the bedroom.

Q. What if anything unusual did you notice there?

A. At the foot of bed I observed two open attache cases.

Q. What did you see inside those attache cases?

A. Clear plastic bags containing the white substance.

Q. Was it similar in appearance to other white powder you saw in the living room and the other white powder you have seen hundreds of times in your duty as a police officer?

A. Yes, sir.

Q. What did you do after you noticed the attache cases open, if anything?

A. We woke up Edward Rodriguez, told him we were (p. 31) police officers, placed him under arrest advised him of his constitutional rights, and handcuffed him.

Q. Now, up to that point, had you even touched the Tupperware, the scales, paraphernalia or attache cases?

A. No, sir.

Q. After you placed this man under arrest, what happened, what did you do?

A. We brought him back out into the front room.

Q. Did he say anything to you, at that time.

MR. REILLEY: I'll object. Were getting beyond the scope of the motion.

MR. BIGONESS: There's some additional evidence recovered -.

THE COURT: Overruled.

MR. BIGONESS:

Q. What if anything did Mr. Rodriguez say?

A. He asked if he could get his money out of a dresser drawer which was in the front room.

Q. All right. And what, if any action did you take?

A. I took him over to the dresser drawer and opened the drawer that he stated the money was in.

Q. And what if anything did you see?

A. I found approximately four hundred fifty-two dollars, USC co-mingled with another clear packet (p. 32) containing white substance.

Q. What did you do with the defendant after you found the money and the drugs in the dresser?

A. Had him transported into the 9 District.

Q. After he was transported, did you have occasion to inspect the premises you have just described at 3519 South California?

A. Only the bedroom and the - and that front room. We didn't go any further.

Q. And was the material you have described the suspect cocaine, and the money and the paraphernalia all inventoried?

A. Yes, sir.

Q. By the way, officer, did Miss Fisher subsequently sign a criminal complaint against Edward Rodriguez.

MR. REILLEY: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: Yes, she did.

THE COURT: Complaint for aggravated battery?

THE WITNESS: No, sir. Simple battery.

THE COURT: Simple battery.

MR. BIGONESS:

Q. Why was not a complaint for aggravated battery submitted to Miss Fisher to sign?

(p. 33) A. A state's attorney from felony review would not approve the charge of aggravated battery.

THE COURT: Occurring that same date?

THE WITNESS: Yes, sir.

MR. BIGONESS:

Q. Now, officer, do you know what time - you, yourself, by the way of personal knowledge know what time the battery occurred to Gail Fisher?

A. All I know is it was earlier in that day.

Q. Could have been 2:25, as far as you know?

A. As far as I know.

Q. And as far as that goes, you described on direct testimony the appearance of Miss Fisher. Could you describe that a little further? What did you notice about her that was unusual?

A. Her jaw was swollen and she had a black eye she had bruises on her neck. She looked like she was the victim of a beating.

Q. In fact she had sustained a broken jaw hadn't she?

A. Yes, sir.

MR. REILLEY: Objection. This is after the fact knowledge, Judge.

THE COURT: Sustained as to what he knew at the time.

MR. BIGONESS: Okay. Nothing further your Honor.

(p. 34) REDIRECT EXAMINATION,

BY MR. REILLEY:

Q. Officer, do you know who it was that contacted the state's attorneys office after the arrest of Mr. Rodriguez to attempt to obtain approval for aggravated battery charges?

A. It was an investigator but I really do not remember his name.

Q. To refresh you, was it possibly investigator Scarpetto?

A. It could have been, yes, sir.

Q. Were you present when he did that?

A. Yes, sir.

Q. What time of the day was this?

A. I really can't remember.

Q. Let's say was it before 5 o'clock p.m.?

MR. BIGONESS: Your Honor I object to this line of questioning.

MR. REILLEY: He brought it out.

THE COURT: Well sustained. I think we have gone far enough.

MR. REILLEY:

Q. All right. My point is, officer, you didn't bother to call the state's attorneys office before you went (p. 35) to Rodriguez' apartment to get approval for aggravated battery or simple battery charges, is that correct?

A. No, sir.

Q. By the way, when you went into the apartment, and saw this Tupperware which you have previously described, did you immediately stop what you were doing[,] secure the apartment, and attempt to obtain a search warrant?

A. No, sir.

MR. REILLEY: Nothing else judge.

THE COURT: Thank you officer. You may step down.

(witness excused)

THE COURT: Who are the next witnesses?

MR. REILLEY: Judge, I - there are no others today that I can call. I understand counsel has a deputy sheriff here who is apparently the mother or stepmother of the victim. And -

MR. BIGONESS: Just one other witness your Honor.

THE COURT: Call her right now.

MR. BIGONESS: I'd call her as my witness.

THE COURT: All right.

MR. REILLEY: I have no objection to that, Judge.

THE COURT: All right.

DOROTHY JACKSON,

called as a witness on behalf of the People of the State of (p. 36) Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BIGONESS:

Q. Ma'am, would you please state your name and spell your last name?

A. Dorothy Jackson. J-a-c-k-s-o-n.

Q. And speak up a little louder when you answer.

A. Yes, sir.

Q. Are you employed; Miss Jackson?

A. Yes, I am.

Q. Where are you employed?

A. Cook County Deputy Sheriff.

Q. Now, do you know a woman by name of Gail Fisher?

A. That's my daughter.

Q. And I'd like to - strike that.

Where do you live, Miss Jackson?

A. I live at 3554 south Wolcott in Chicago.

Q. And who do you live there with?

A. Myself.

Q. All right. Now directing your attention to about July 1, 1985, who were you living with on that date?

A. I was living by myself.

Q. Now, did you happen to see Gail Fisher on July 1, (p. 37) 1985?

A. Yes, I did.

Q. About what time did you see her?

A. Well, probably the first time I saw her, it was in the morning when I was babysitting. You know, she would drop the children off for me to babysit.

Q. She has children?

A. Yes.

Q. How many children does she have?

A. She had 2 girls.

Q. How old were they on that date?

A. Well they are 3 and 5 now. So they had to be about 2 and 4.

Q. Okay. And did you babysit for Miss Fisher?

A. Yes, I did.

Q. And were you baby sitting for her on July first 1985?

A. Yes, I was.

Q. And you're taking care the children the two children?

A. Yes.

Q. You said you saw Miss Fisher?

A. Yes.

Q. On July 1st, what time did you see her?

(p. 38) A. In the morning before she went to work because she only worked three blocks away.

Q. Okay. Approximately what time was it, if you recall?

A. Within an hour, I could say between 8:30 and 9:00. Between 8:00 and 9:00.

Q. And did you have a conversation with Miss Fisher, at that time?

A. Not usually. She just dropped the children off and she went.

Q. How about on this date did you have a conversation with her?

A. Well, after I put the children to bed I was, you know, in the house and someone was coming up the back door. And you know that really startled me because no one usually comes in the house, right.

Q. Who was that person that came to the back door?

A. That was my daughter, Gail Fisher.

Q. Was she carrying anything?

A. She had - I don't know. She had something in her hands. Probably her purse. And - the - what really scared me is -.

MR. REILLEY: Objection, your Honor.

THE COURT: Sustained. Ask another question.

(p. 39) MR. BIGONESS:

Q. Did you have a conversation with Miss Fisher at that time?

A. Yes, I did.

Q. Okay. What if anything did she tell you?

A. Well, I asked her what she was doing home from work so early but then, she had her shorts on so I knew she couldn't have been at work.

MR. REILLEY: I'll object to the -

THE COURT: What did she say. Just what did she say.

THE WITNESS: What did she say?

MR. BIGONESS:

Q. Did she say anything else to you, at that time?

A. She says, "we have to talk." She says, "Mom, we have got to talk."

Q. Okay. This is on July 1st?

A. Oh, no July first I'm sorry. No. July 1st when she came back after work, she wanted me to move her out move her clothes out. She said that Ed was going to go to band practice. Was on a Monday night. And so, she had the key to the house. So, I stayed in the car with the children and she took like -

Q. She had the key to what house?

A. To her apartment where her clothes were.

(p. 40) Q. Where was her apartment on July [1]st, 1985?

A. Where was her apartment?

Q. Yes.

A. 35th and California. 3519 South California.

Q. So you went with her back to 3519 South California?

A. Yes, with her and the children.

Q. What did she do when she went back on July 1st?

A. She had taken some black garbage -

Q. First of all, she had the key, right?

A. Yeah. She went in through the back. She - while I was waiting in the alley while she put some clothes and says she's going to get some clothes for the children and for herself.

Q. So so she used the key and entered the home?

A. Yes.

Q. Did she leave with anything?

A. Yeah she had like two or three baggies, whatever she could just grab real fast.

Q. And she went back to your apartment house, correct?

A. Yes, sir, she did.

Q. And she left the bags - by the way, what was inside the bags?

(p. 41) A. Clothing.

Q. She moved those to your house, correct?

A. Yes.

Q. Now, did she take everything she owned from the apartment at 3519?

A. No. I - I've got a two door car. She just took clothes. It was real fast. Just to get some clothes.

Q. Now, what items if you know did she leave behind when she owned?

A. All her furniture.

Q. Anything else?

A. Her personal - all her personal things like her bills and - just everything. It was just getting the clothing. Her stove, refrigerator, table and chairs. Her couch that opens up to a bed, it was a sofa. The childrens bed and like a - maybe a three piece dresser.

Q. Dishes?

A. Her dishes, the china my mom had given her.

Q. At any time between July 1, 1985 and July 26, 1985, did she ever return to that location to retrieve the property you have just mentioned?

A. No. no. She would just go back there.

Q. Now, did you have a discussion about her move back with you?

(p. 42) A. On July 1st, that's when we moved her back.

Q. Okay. When you spoke to her, who else was present? Did - just you and her?

A. Yeah.

Q. This was at your house?

A. Yes.

Q. And where - what, if anything did she say about moving back with you?

A. She said that Ed wanted the children - you know the baby was like about maybe not quite two years old because she would have been two in September. That he was getting irritated the fact that she was still on the bottle. The baby was still on the bottle and the diaper. And she was coming back - because he wanted the baby bottle broken and potty trained.

Q. And what would happen after the baby was bottle broken and potty trained?

MR. REILLEY: I'll object to -

MR. BIGONESS: According to Miss Fisher.

THE COURT: Overruled.

MR. BIGONESS:

Q. What did Miss Fisher say would happen after the baby was potty trained and bottle broken?

A. That's the purpose of coming back home.

(p. 43) Q. What was she going to do after that point was reached?

A. She wasn't going to stay by me because it wasn't agreed she would continue to stay by me.

Q. Where would she go, according to you?

A. She'd have to go back to her apartment.

Q. Now, directing your attention to July 26, 1985, did you see your daughter, Gail Fisher, on that date?

A. July what.

Q. July 26?

A. July 26th. That was on a Friday?

Q. I'm sorry. I don't know.

A. Okay. The 22nd was on a Monday, so it was a Friday.

THE COURT: What are we talking about, July -

THE WITNESS: 26th

THE COURT: 1985?

THE WITNESS: Yes.

MR. REILLEY: Judge, I'll stipulate it was a Friday.

THE WITNESS: Okay. She brought the children, you know. I had the children. Okay.

MR. BIGONESS:

Q. Well first of all let's back a day. On the 25th was she still living with you?

(p. 44) A. She was sleeping there.

Q. All right. Were there any nights between July 1st and July 26th when she did not return home to stay at your home?

A. On July 22nd, she left with the children. You know after - usually, she got off work about 4:00, 4:30. She left with the children. And she was going to meet Ed. And that night, Ed Rodriguez called me up and he was like out of breath saying, "Is Gail there? Is Gail there?" And I said well she went by you. And I said are you okay. Is everything okay and he hung up. A few minutes later Gail called me. I said, "Gail I thought you said you were

by Ed's." And she says - I said, "He just called." And she wanted me to say what I had cooked like she was being questioned about what I had cooked, was she really in the house and -

THE COURT: Ask another question.

MR. BIGONESS:

Q. Miss Jackson, at any time between July 1st and July 26, did Miss Fisher, to the best of your knowledge visit Edward Rodriguez at his apartment at 3519 South California?

A. Between July 1st and July 26th?

Q. Yes.

(p. 45) A. I believe so. I believe so because there were many times -

MR. REILLEY: I'll object to that. What she believes.

THE COURT: Sustained.

THE WITNESS: She didn't always come home.

MR. BIGONESS:

Q. Now, directing your attention to July 26th, that would be the Friday, Miss Fisher was staying with you on that date, correct?

A. Right.

Q. And she got up in the morning?

A. She went to work.

Q. About what time did she go to work?

A. Between 8:30 and 9:00, or sometimes she would leave late and I'd say Gail -

THE COURT: One second. Let me ask this. Between July 1st and July 26th did the children always stay at your house.

THE WITNESS: No. No.

THE COURT: How many days were they away from your house?

THE WITNESS: She would sleep over night, but if she took - but if she could take -

THE COURT: How many days did they not - how many (p. 46) nights did she not sleep at your house with the children?

THE WITNESS: Between July 1st and July 26th?

THE COURT: Right. If you can remember. Approximate.

THE WITNESS: To the best of my knowledge, if it was like two or three - three times because sometimes she wouldn't come home.

THE COURT: Two or three times? How many nights if any, would your daughter Gail Fisher not stay, sleep overnight at your house between July 1st and July 26th?

THE WITNESS: Oh, Okay. That's hard to say, your Honor. Because -

THE COURT: More than once.

THE WITNESS: Sometimes she'd come home 4:00, 5:00 in the morning. That's not sleeping overnight.

THE COURT: How many times did she not come home to your house until 3:00 O'clock in the morning.

THE WITNESS: To the best of my knowledge, I'll say three to five times.

THE COURT: All right. Go ahead, Mr. Bigoness.

MR. BIGONESS:

Q. Now, on July 26, 1985, Miss Fisher appeared at your door, correct?

A. My back door.

Q. Okay. About what time was that?

(p. 47) A. It had to be between 1:00 and 3:00. More specifically, about 1:30 to 2:30.

Q. She appeared at which door?

A. She came up the back door. It was unlocked.

Q. And did you have a conversation with her on that date?

A. Yes. I -

Q. Who else was present?

A. The children were sleeping. They were taking their nap. I was alone in the kitchen and I heard someone walk up the back and -

Q. What if anything did Miss Fisher tell you at that time?

A. I just said, "You came home from work so early." And she said, "Mom, we have to talk." And that's when I

noticed her face. She already had the black eye from Monday.

Q. Can you describe her face?

A. Oh, God. It was terrible. I said, "My God, what happened to you?"

THE COURT: What did her face look like.

THE WITNESS: Her jaw was out to the side. She still had the black eye. And I really didn't look because I was upset. I was really upset but I did see her face was every distorted. Jaw bone was out to the side. She still had a (p. 48) black eye.

MR. BIGONESS:

Q. Then you had a conversation with Miss Fisher?

A. I said, "What happened?" She says, "Mom, we have to talk."

Q. Did you then talk to her?

A. Yes.

Q. What did she tell you?

A. She told me Ed Rodriguez had beat her.

Q. Did she go onto describe how the beating took place?

A. No, because I says, "Well, I'm calling the police again." I had called them Monday. I had called them -

Q. Okay. But on the 26th you then called the police

A. I called the police. I said something's got to be done.

Q. Did the police subsequently arrive?

A. Yes they did.

Q. About what time did they arrive, if you recall?

A. From whatever time I called them it didn't take long. Five or ten minutes. I only called them one time and I probably would have called them again if she didn't come -

MR. REILLEY: Objection.

(p. 49) THE COURT: Just listen to the question and answer only the question that your [sic] listening to. Next question.

MR. BIGONESS:

Q. Now, did and [sic] Officer arrive after you called the police, right?

A. Yes, sir.

Q. That was a uniformed officer or plain clothes?

A. Regular policeman. Police car.

Q. Wearing his police gear?

A. Right.

Q. And do you remember that officer name, by any chance?

A. No, I don't.

Q. Could it have been Officer Tenza is that -

A. That sounds familiar but I really wouldn't really know his name.

Q. Now, other police officers arrive shortly thereafter?

A. Yes. He made a call to get some help.

Q. Which officers were they, if you recall?

A. Now, those I remember. It was Officer Entress, Jim Entress and Rick Gutierrez.

Q. Now, when those officers arrived, a conversation took place between Gail Fisher and the police officers, (p. 50) correct?

A. Right

Q. And you were present for that conversation?

A. Yes, sir, I was.

Q. And to the best of your recollection, what did Gail Fisher tell the police officers?

A. She told them what happened.

Q. What did she actually say, though?

A. She said that he had beat her up. And -

Q. Did she name the person that beat her up?

A. Yes. Ed.

Q. All right. And what else did she say, if you can recall? Tell the court exactly her words.

A. Okay. I was having company coming at the same time so I didn't get to hear everything, okay.

Q. Well, tell the court the parts you heard if you would?

A. Okay. She said that he beat her up and they wanted to know if she wanted to go over there and let them in. If she could let them in to get him. And she was hesitant and they said why has he got some - I'll use a difference word -

Q. What is the word the officer said?

A. Well, I - I don't talk that way. I don't want to (p. 51) say it, but another word for has he got crap in the apartment or drugs you know. And she says - just looked at them and then she said yes. And I said I believe he had it too. And that's why she was afraid to go -

THE COURT: Next question.

MR. BIGONESS:

Q. Now, when - did - well, strike that question.

You then entered a police car with the officers which had responded, correct?

A. Yes. My friend came over and I left him watching the babies.

Q. Then, you got in the police car?

A. Yes.

Q. You went over -

A. Gail and I went -

THE COURT: Let him ask the question.

Ask the question. Listen to his questions.

MR. BIGONESS:

Q. You entered the police car and you drove to 3519 South California, correct?

A. Yes, sir.

Q. Once you arrived there, what did you see your daughter Gail Fisher do?

A. My daughter and I got out of the squad car and we (p. 52) went to the front door and Gail put the key and opened up the door and pushed door back. Took the key and I stayed by her until we both got in the squad car.

Q. Were there officers with you when your daughter opened the door?

A. Yes, sir.

Q. Which officers were they, if you recall?

A. It was Officer Entress Gutierrez and the officer that first came in the police uniform.

Q. Which officers went to the front door?

A. I know the two fact, Entress and Gutierrez did. I think the other officer went to the back door and it was locked, so he came back.

Q. Okay. Thank you.

And you testified that you went to the squad car and had a seat?

A. Yes.

Q. And then, - well what did you see when you went back to the police car?

A. Well, we - I think it was like about five or ten minutes and then, -

MR. REILLEY: I'll object to - at that time this point. I believe it's beyond the scope of the motion.

THE COURT: Let her finish her answer to this question.

(p. 53) THE WITNESS: It was about five, ten minutes. Ed Rodriguez came out handcuffed with the officers gave us a dirty look.

MR. REILLEY: Ask that that be stricken, Judge.

THE COURT: Overruled.

THE WITNESS: That's what I said.

THE COURT: Next question.

MR. BIGONESS: Just one more question Miss Jackson.

During the time that your daughter was conversing with the police officers, did you ever hear her refer to the apartment at 3519 South California -

MR. REILLEY: Objection to leading question that's about to happen, Judge.

THE COURT: Sustained. Ask simply a question in terms of how she referred, if at all to the apartment, on California.

MR. BIGONESS:

Q. Miss Jackson did you ever hear your daughter refer to the apartment at 3519 South California? Did you ever hear her talk about it?

A. About her home?

Q. About 3519 South California?

A. That was her home.

Q. Did she ever refer to the apartment, though? Did (p. 54) she ever mention it when she was talking to the police officers?

A. That's where she was living with him.

Q. The answer is, "Yes" then, correct?

A. Yes. That's where she was living with him.

Q. Did she ever refer to it as his apartment?

A. No.

Q. How did she - whose apartment was it in her conversations with the police officers.

THE WITNESS: Our apartment.

MR. BIGONESS: Nothing further your Honor.

REDIRECT [sic - CROSS] EXAMINATION

BY MR. REILLEY:

Q. Miss Jackson the morning of July 26, 1985, that being the date that Mr. Rodriguez was arrested?

A. Yes.

Q. You said you saw your daughter that day - I'm sorry about 1:30 or so in the afternoon, is that correct, approximately?

A. Yes, sir.

Q. Prior to that time and date, when was the last time you saw your daughter? Do you understand my question?

A. Oh, yes, sir.

(p. 55) Q. Prior to seeing her coming up and you saw the injury that you have described, when was the last time you saw her before that?

A. That morning.

Q. What time?

A. When she was supposed to be going to work probably around - between 8:30 and 9:00 o'clock.

Q. All right. Is it a safe assumption then she slept in your home on July 25, 1985 is that correct?

A. Give me time to think. Yes.

Q. In other words the day before, she stayed over at your house?

A. Yes.

Q. How about the day before that?

A. The day before that too, she got up and went to work.

Q. Okay.

A. Now Thursday, okay. I'm trying to say the day. When you say the day before that I want to be specific. Thursday, yes she went to work.

Q. Okay. By that she went to work leaving from your residence, correct?

A. Right.

Q. To make no mistake about it, your residence is (p. 56) 3554 South Wolcott, is that correct?

A. Yes, sir.

Q. Now -

A. She didn't go to work Thursday.

Q. Just listen to my question though, okay?

I believe Honor [sic] Honor, Judge Schreier, asked you a question. I'm not quite sure I understand your answer, so I'd like to just clarify something.

A. Okay.

Q. On July 1, 1985, I believe it's your statement, your testimony, that your daughter, Gail Fisher brought the two children over to your residence that you had some conversation and that at that point for that period of the month of July of last year, she was living with you with her children, is that a fair statement?

A. From July first -

Q. Is that correct?

A. Is when she brought the clothes.

Q. That's when you went back - did you go over there with her to get the clothes?

A. Yes, sir.

Q. All right. So, am I correctly describing this? That she move back in with you, is that correct?

A. She took three bags of clothes. That's all.

(p. 57) Q. Did she stay in your house from July 1, 1985 until the morning of July 26, 1985, the incident in question, did she stay there every night whether it was midnight or 3:00 in the morning?

A. On and off for those three weeks, sir.

Q. During that three weeks or three and a half weeks period of time, were there any nights she did not come home at all?

A. I would have to say to the best of my knowledge like two or three nights.

Q. The rest of the times which would mean another twenty-three days, approximately she stayed over at your house is that correct?

A. Yes.

Q. How about the two children, were they there and on each and every evening between July 1st and July 26th?

A. Unless she stayed out with them overnight, no.

Q. You say perhaps you recall two or three times that she might not have come home until maybe 3:00 O'clock in the morning?

A. Right.

Q. But she did come home and sleep at your house, is that correct?

A. Yes.

(p. 58) Q. Even if it was -

A. Even if it was for a couple of hours you mean?

Q. Yes.

A. Yes.

Q. Did she have a bedroom in your residence?

A. No, sir.

Q. Where did she sleep?

A. She slept on the couch.

Q. Okay. Where did the children sleep?

A. I had a bed in one bedroom that my mom was staying with me, one of the daughters slept there. The other one slept on the floor on top of a mattress, because I didn't have the crib.

Q. Is Gail Fisher your natural daughter or step-daughter.

MR. BIGONESS: Objection.

THE WITNESS: She's not my daughter.

THE COURT: Overruled.

MR. REILLEY:

Q. She's your natural daughter?

A. No. I adopted her when she was three days old.

Q. By the way, you know who Edward Rodriguez is, don't you?

A. The man in the yellow shirt sitting next to you.

(p. 59) Q. You have known him for a long period of time?

A. I know him since October, '84.

Q. October of '84? Okay.

A. I think it was October, '84 when he first - I first saw him at my daughters apartment which he lived next door.

Q. Next door to who?

A. Next door to me.

Q. Did you ever hear your daughter, Gail Fisher, tell the police officers who were there at your residence on July 26, 1985, that she was the victim of a battery namely she was beaten by Mr. Rodriguez?

A. Gail didn't use that -

Q. Let me finish my sentence.

That she described what occurred at the apartment but that she told the police she didn't live there any longer but she used to live there?

Do you recall her saying that?

A. She didn't say that.

Q. She didn't say it?

A. No.

Q. You didn't hear all the conversation of Gail with the police because -

A. Gail doesn't talk -

(p. 60) Q. Let me finish my question and I'll let you answer.

A. Okay, sir.

Q. You weren't present for everything Gail Fisher said to the police on that morning, is that true?

A. I was right in the front room.

Q. Did you hear everything she said?

A. About 99 and nine tenths because I had to open the door and let this man in.

Q. That means you didn't hear everything she said, is that true?

A. Go ahead. You got it.

Q. Is that true.

THE COURT: She said 99 and nine tenths.

MR. REILLEY: Yes, sir.

Well, Miss Jackson just one last question. It is in fact true that Gail Fisher was living with you on July 26, 1985, is that correct?

A. She slept there sometimes.

MR. BIGONESS: Objection.

MR. REILLEY: Thank you.

MR. BIGONESS: Objection calls for a conclusion.

THE COURT: "She slept there sometimes" will stand as the answer.

MR. REILLEY: Let met [sic] ask this. "Sometimes" means out of (p. 61) that twenty-six day period -

MR. BIGONESS: Objection to "sometimes." Speaks for itself.

THE COURT: Wait a second. You're a witness, miss.

THE WITNESS: I know but -

THE COURT: Now, you're going to - your commentary is not asked for nor wanted.

THE WITNESS: Okay. Thank you.

MR. REILLEY: I have no further questions.

THE COURT: Past testimony has already specified in detail exactly what was meant by that phrase.

MR. REILLEY: Yes, sir. I have nothing else, Judge.

MR. BIGONESS: No redirect.

THE COURT: Step down. Is there another witness today?

MR. REILLEY: No, sir.

THE COURT: Okay. Let [sic] give it a date then for further witnesses in this matter.

What date Mr. Reilley do you suggest?

MR. REILLEY: May I just check here. If your court calendar would permit something right after the Labor Day weekend.

THE COURT: How is September 4th? Do we have anything set that day or the 5th for that matter. The 4th or 5th, I (p. 62) would say, Mr. Reilley.

MR. REILLEY: I have a couple of matters in the building on the 4th, but I think one might be another motion so the 5th would be better for my schedule.

THE COURT: That's fine. By agreement, September 5th to conclude the motion.

MR. REILLEY: Thank you, Judge.

THE COURT: All right. Thank you.

(whereupon the above-entitled cause was continued to the 5th day of September, A.D., 1986)

(p. 64) STATE OF ILLINOIS)
COUNTY OF COOK) SS:

IN THE CIRCUIT COURT OF
THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE)	Case No.
OF ILLINOIS)	85-C-10942
)	
vs.)	Charge: Del.
EDWARD RODRIGUEZ)	Ctr. Subs.

MOTION TO SUPPRESS EVIDENCE

REPORT OF PROCEEDINGS had before the HONORABLE JAMES M. SCHREIER, Judge of said court, on the 5th day of September, 1986.

APPEARANCES:

HONORABLE RICHARD M. DALEY,
State's Attorney of Cook County, by:

MR. THOMAS GIBBONS,
Assistant State's Attorney,
appeared for the People;

MS CHRISTINE CURRAN,
appeared for the Defendant.

Mary M. Flagg, CSR
Official Court Reporter
2650 S. California Avenue
Chicago, Illinois 60608

* * *

(p. 66) GAIL FISCHER,

a witness called on behalf of the Petitioner-Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CURRAN:

Q Miss Fischer, would you please state your name and spell your last name for the court reporter?

A Gail Fischer, F-i-s-c-h-e-r.

Q And Miss Fischer, where do you live?

A 3725 South Paulina.

Q Who do you live there with.

MR. GIBBONS: Judge, I will just object as to her current living situation. I'm sorry her address came out.

THE COURT: Sustained as to who she currently lives with.

BY MS. CURRAN:

Q Drawing your attention to July 1, 1985, Miss Fischer, where did you live on that day?

A With - I moved in with my mother that day.

(p. 67) Q Immediately prior to moving with your mother on that day where did you live?

A 3519 South California.

Q And who did you live there with at that time?

A Edward.

Q What's the last name, please?

A Rodriguez.

Q Do you see him in court?

MR. GIBBONS: Stipulate to the identification, Judge.

THE COURT: So stipulated.

BY MS. CURRAN:

Q Did anyone else live there beside you and Mr. Rodriguez?

A My two children.

Q Now on July 1, 1985 what happened unusual, if anything?

A My friend came over and she helped me get all my clothes out of his apartment.

Q Your friend came over to Mr. Rodriguez' house, and about what time of day was that on July 1?

A Maybe around 6 o'clock.

Q That's in the -

A Evening.

(p. 68) Q P.M.

A Yeah.

Q And you removed your clothes, is that right?

A Yes.

THE COURT: This is July 1, 1985.

MS. CURRAN: That's correct, Judge.

Q And did you remove your children's clothes?

A Yes.

Q And from 3519 South California where did you go?

A 3554 South Wolcott.

Q Who lives there?

A My mother.

Q And did you move in with her mother on that date?

A Yes.

Q When you left 3519 South California on July 1, 1985, did you have a key to the apartment on California?

A No. I left - No.

Q What did you do with the key that you had been using?

A I left it in the apartment.

Q Now drawing your attention to July 26, 1985, (p. 69) what, if anything, happened on that day?

A We had an argument.

Q Who do you mean by we?

A Me and Ed.

Q And after the argument what did you do?

THE COURT: May we know where the argument took place on July 26?

MS. CURRAN: I'm sorry, Judge.

Q Where did the argument take place on that date?

A 3519 South California.

Q That was Mr. Rodriguez' apartment?

A Yes.

Q And after the argument what did you do?

A Went home.

Q By home, what address are you talking about?

A 3554 South Wolcott.

Q That's where you were living with your mother, is that right?

A Yes.

Q And what did you do when you got to your home?

A Walked in the house and my mother asked me what had happened.

(p. 70) Q Did you do anything after you got to your mother's house?

A She called the police.

Q And did the police come to your mother's house?

A Yes.

Q And when the police came to your mother's house then what happened.

I'm sorry. Go ahead.

A Then we went to Mr. Rodriguez' apartment.

Q Who went to Mr. Rodriguez' apartment besides yourself?

A My mother, the police officer, Jim Entress (phonetic spelling) and Rick Gutierrez.

Q How many police officers were there?

A When we first got there there were - The three and then I think there might have been another one that came after.

Q Did you tell any of those police officers on July 26, 1985 that you were living at 3519 South California?

A No.

Q Before you left your mother's house on July 26 did you have a key to Mr. Rodriguez' apartment?

(p. 71) A Could you repeat the question.

Q Before you left your mother's house on July 26, 1985 did you have a key to Mr. Rodriguez' apartment?

A Was this - After the police came?

Q Yes?

A Yes.

Q When did you get that key?

A That day when I left his house.

Q Who do you mean by his.

Q Mr. Rodriguez' house?

A Yes.

Q You took the key from Mr. Rodriguez' apartment, is that right?

A Yes.

Q Where was the key?

A On his dresser.

Q Did Mr. Rodriguez give you the key?

A No.

Q Was he present in the room when you took the key?

A Not in the room.

Q Did you tell him that you were taking the key?

(p. 72) A No.

Q Did he give you permission to take the key?

A No.

Q Now back to your mother's house on July 26, 1985, prior to going over to Mr. Rodriguez' house on that day did you sign any complaints against him for battery?

A I don't remember.

Q Did you go to Mr. Rodriguez' house straight from your mother's house?

A Yes.

Q Do you remember before you left your mother's house whether or not you signed any papers?

A I don't really remember.

Q Now when you went to 3519 South California on that date what happened?

A I let the police in and I went -

Q Now how did you let them in?

A With the key that I had taken off his dresser.

Q That was the key that you had taken earlier that day?

A Yes.

Q At any time on July 26, 1985 did you tell the (p. 73) police any of the those police officers that you lived at 3519 South California?

A No.

MS. CURRAN: I believe I have no further questions at this time, Judge.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. GIBBONS:

Q Miss Fischer, how long have you known the defendant here?

A About two and a half years.

Q And at some point at least you were living - sleeping and living with your kids in the apartment with him, is that correct?

A Yes.

MS. CURRAN: Judge, I'm going to object to "at some point".

THE COURT: Yeah. See if you can be specific at least in terms of a month Mr. Gibbons.

MR. GIBBONS: Judge, I was going to do that with my next few questions if I had an opportunity.

Q Were you living with him in the apartment at some point, ma'am?

A Yes.

(p. 74) Q And when was that?

A I moved in December of '84.

Q December of 1984?

A Yes.

Q Were you living there in December of '84?

A Yes.

Q Were you living there in January of '85?

A Yes.

Q February of '85?

A Yes.

Q March of '85?

A Yes.

Q And April of '85?

A Yes.

Q May of '85?

A Yes.

Q June of '85?

A Yes.

Q And during all that time that you lived there you were there with your children, is that correct?

A Yes.

Q And how many children were you there with?

A Two.

Q And what are their names?

(p. 75) A Jennifer and Jacqueline.

Q After during that time period you had an stove, refrigerator there. Stove and refrigerator?

A Yes.

Q You had a table and chairs there?

A Yes.

Q Did you have a -

MS. CURRAN: I'm going to object to this. This is beyond the scope of my district exam.

THE COURT: Overruled.

BY MR. GIBBONS:

Q Did you have a couch that opened up like a bed there?

A It was my ex-husband's.

Q Well you had a couch there that opened up like a bed?

A It didn't belong to me.

Q Well who put the couch in there?

A Ed had bought it off of my ex-husband.

Q And did your children have a bed there?

A Yes.

Q And was there any dressers there belonging to you and your children?

A The Children, yes.

(p. 76) Q What about dishes? Were the dishes there?

MS. CURRAN: Judge, I'm objecting on the ground that anything that happened before July 1, 1985 is beyond the scope of my direct and it's not relevant.

THE COURT: Well, it might not - It might end up to be not relevant but I imagine that it's going to be tied in.

BY MR. GIBBONS:

Q Were your dishes there, ma'am?

A Yes, I had some china there.

Q Now on July 1 you and the defendant here, there was a fight between you - between the two of you, correct?

A On what date?

Q June 30, July 1, right in that time?

A No. That was just the day that I moved out.

Q At some point prior to your moving out moving out he beat you up, correct?

MS. CURRAN: Objection, Your Honor. I don't know the scope and issue.

THE COURT: Overruled.

BY MR. GIBBONS:

Q That's right?

A We had an argument.

(p. 77) Q Well, didn't you move out because he beat you up?

A Because we used to fight.

Q And in fact, he physically beat you up at about on or around July 1, correct?

A No.

Q When did he beat you up?

A The -

MS. CURRAN: Objection, Judge. She didn't say that he beat her up. That's putting words in the witness' mouth.

THE COURT: She can deny it if it never did exist but you were about to answer. You may answer.

BY MR. GIBBONS:

Q Did he beat you up, ma'am, or not?

A The end of July?

Q What about at the beginning of July or the end of June?

A No.

Q He never beat you up before the end of July, is that right?

A We had fights.

Q Where he hit you, correct?

A He'd slap me.

(p. 78) Q And it was because of his slapping you and fighting with you that you moved out, according to you anyway, on July 1?

MS. CURRAN: Objection, Judge. Why she moved out is totally irrelevant.

THE COURT: Sustained.

BY MR. GIBBONS:

Q Well on July 1, ma'am, when you say you moved out you took clothes with you, is that right?

A Yes.

Q And clothes for your kids?

A Yes.

Q Did you leave behind a stove.

MS. CURRAN: Objection. Asked and answered.

THE COURT: Overruled.

BY MR. GIBBONS:

Q Was the stove still there?

A Yes.

Q Was the refrigerator still there?

A Yes.

Q Were the dishes, the china that your mother gave you, was that still in the apartment?

A Yes.

Q Was the dressers that you and your children (p. 79) used, were they still in the apartment?

A Yes.

Q So the only thing that you moved out of the apartment at that time was clothing, is that correct?

A Yes, that's correct.

Q Everything else that you owned was still in the apartment, correct?

A Yes.

Q Now between July 1 and July 26 you were back at the apartment, were you not?

A Yes.

Q And in fact you saw the defendant there almost every day, didn't you?

A Yes.

Q And in fact -

THE COURT: Saw him every day at the apartment?

BY MR. GIBBONS:

Q At the apartment, isn't that right?

A Yes.

Q And in fact sometimes you would be there late into the night, isn't that right?

A Yes.

Q And in fact on occasion you stayed over there, isn't that right, slept the night there?

(p. 80) A I don't really recall, but I believe I probably did.

Q Now prior to July 26, 1985, the defendant punched you in the face, didn't he, earlier in the week?

A Yes.

MS. CURRAN: Object as to prior.

THE COURT: Overruled. "Yes" will stand.

BY MR. GIBBONS:

Q And he gave you a black eye, didn't he?

A Yes.

Q And on July 25 of 1985 he beat you up so badly that he broke your jaw, isn't that right?

A It was the 26th.

Q On the 26th, in the morning of the 26th?

A Yes. Sometime during the day of the 26th.

Q Where did he beat you up, ma'am?

A 3519 South California.

Q That was the apartment where he was living?

A Yes.

Q And you were there with him at that time?

A Yes.

Q On July 26th?

A Yes.

(p. 81) Q And all of these personal items that belonged to you were they still there, the furniture and the refrigerator and the stove and beds and the dressers and the couch, were they all still in the apartment at that time?

A Yes.

Q And it was after he beat you up that you went over to your -

THE COURT: What bed is it you're speaking of, Mr. Gibbons again.

BY MR. GIBBONS:

Q Whose bed was in the apartment?

A I had one bed.

Q Which bed?

A The children's bed.

Q And was the mattress on the bed?

A I - I suppose.

Q Well the child slept on a mattress when she slept on the bed, didn't she?

A Yes.

Q Now after he beat you up in the apartment on California you went over to your mother on Wolcott, right?

A Yes.

(p. 82) Q And it was at that time that you decided to move the rest of the things that belonged to you from the apartment on California, correct?

A It was at what time?

Q After he beat you up on the 26th you decided to get your stuff out of the apartment, correct?

MS. CURRAN: Objection, Judge. There's no testimony about that. There's no testimony regarding her plans to move articles out of there one way or the other.

THE COURT: Well, rephrase your question, Mr. Gibbons, please.

BY MR. GIBBONS:

Q Well on July 26th when he beat you up at that time did you intend to take the rest of the things that you owned out of the apartment or were you still planning on leaving them there?

A Well I was planning on leaving them because I told him he could use the stove and fridge and tables since he had gotten rid of his to move mine in.

THE COURT: Your table was there, also?

A Yeah.

BY MR. GIBBONS:

Q And chairs?

(p. 83) A Yeah. I don't know about chairs.

Q Now you called the police or somebody called the police on July 26th, correct?

A My mother.

Q And when the police came you told the police that this man here had beat you up, correct?

A I think my mother told them.

Q Didn't you talk to the police at all when they came over there?

A Yes.

Q Is this Officer Entress and Tensa (phonetic spelling)?

A I don't know the police officers name that came over first.

Q Didn't the police officers ask you what happened to you?

A Yes, but -

Q Didn't you tell them that he had beaten you up?

A Yes, but my mother is very out spoken.

MS. CURRAN: Your Honor, I'm going to enter a continuing objection to counsel's characterization of the beating up and anything related to that.

THE COURT: What - A fractured jaw, that's a (p. 84) beating up.

MS. CURRAN: Your Honor, I think what the State is trying to do is they're trying to use this. This is a motion

to suppress items in a drug case, Judge. My client is not on trial for battery.

THE COURT: Objection overruled.

MR. GIBBONS: I think it's clearly relevant?

Q At the time the police officers asked you where the defendant was at, is that right?

A Yes.

Q And you told them he was over at the apartment on California?

A Yes.

Q And you told them you would take them over there, didn't you?

A Yes. They told me that was what I had to do.

Q They told you you had to do that?

A In order to -

Q Didn't -

THE COURT: In order to what?

A If I wanted to press charges.

BY MR. GIBBONS:

Q That that would be what you would have to do, take them over there, is that right?

(p. 85) A Yeah.

Q And you told them that you had a key to the apartment, right?

A Yes.

Q And you told them that you would let them into the apartment so that they could arrest the defendant, correct?

A Well they told me that's - That was what I had to do.

Q Did you tell them that you would do that or not?

A Well yes, I agreed to it.

Q You agreed to it. And in fact you went over to the apartment with the police, didn't you?

A Yes.

Q And you had the key with you, didn't you?

A Yes.

Q And you put the key in the lock and turned the lock and opened the door so the police could get in, didn't you?

A Yes.

Q And then you let the police go in and you stayed outside?

A Yes.

(p. 86) Q And you told the police that Mr. Rodriguez would be in there?

A Yes.

Q Probably sleeping in the bedroom, correct?

A I don't recall.

Q Now you say that you got the key - when was it, earlier in the day or something?

A Yeah, that day right before I left.

Q What time was that?

A In the afternoon. Maybe around two.

THE COURT: Had you had a key to the apartment at any time during July, between July 1 and July 26th?

A No.

BY MR. GIBBONS:

Q You say you got the key off the dresser?

A Yes.

Q The defendant wasn't there at that time, Mr. Rodriguez here?

A Not in the room.

Q He didn't give you the key?

A No.

Q Do you remember testifying in a preliminary hearing in this matter on September 11, 1985?

A I don't -

(p. 87) Q Do you remember ever testifying in this matter before?

A Right after it happened I think in September.

Q You did testify in this matter?

A Yes.

Q And on that particular date do you remember - This is page 24. Do you remember an assistant state's attorney by the name of Mr. Zelezinski asking you who lived at the address on California and you said Ed does and then the question

"Q Does anybody else live there?

A No.

Q How did you get in?

A With a key.

Q Who gave you the key?

A He did."

Do you remember being asked that question and giving that answer?

A I don't really remember.

Q You don't remember that?

A No.

THE COURT: Counsel stipulate if the court reporter were called she would testify that the question was asked and the answer given according to (p. 88) her notes.

MS. CURRAN: Yes Judge.

BY MR. GIBBONS:

Q Now, since July 26th when this incident happened the defendant has - You have seen the defendant, have you not?

A Yes.

Q And you have been out with him on occasions since that time, haven't you?

A Yes.

Q And in fact you are still -

MS. CURRAN: Judge, I object to anything after July 26th. Not relevant to this matter.

THE COURT: Goes to any bias or interest in the outcome as it would pertain to any witness who testifies, the relationships with the defendant or any possible bias.

BY MR. GIBBONS:

Q Since July 26th you have had another argument with the defendant, haven't you?

A Probably had a few arguments.

Q And in fact in one of those arguments since that time he came through your friend's window, didn't he?

(p. 89) MS. CURRAN: Objection, Judge.

THE COURT: I'm not sure. Are you driving to a particular point?

MR. GIBBONS: Yes. I think the point is that -

THE COURT: Go ahead. Make your motion to strike at the end, Miss Curran, if it doesn't become material. It's a bench trial but if it were a jury I'd resolve it right now.

MR. GIBBONS: Thank you, Judge.

Q He came through your friend's window, didn't he? This defendant here?

A Yes.

Q And he came up to you and he used his fist to hit you in the face?

A Yes.

Q And in fact, he hit you so hard that your cheekbone was fractured in four place, isn't that correct?

MS. CURRAN: Continuing objection, Judge.

THE COURT: You may answer.

BY MR. GIBBONS:

Q Ma'am, isn't that right?

A Yes.

Q And in fact since July 26th when this (p. 90) incident happened there's been other instances beside the one where he fractured your cheekbone where he's hit you, isn't that right?

A I don't remember any.

Q Well I guess ma'am it's true, isn't it, that you are certainly afraid of this man here?

MS. CURRAN: Objection, Judge.

THE COURT: Overruled. That would certainly - If true that might certainly affect her testimony.

BY MR. GIBBONS:

Q Isn't that right, ma'am?

A At times.

Q Well you're afraid that if you testified against him that he would come over or somebody that he knows would, say, come over and get you, aren't you?

Aren't you afraid that if you testify against this defendant that somebody will come and get you, if not him?

MS. CURRAN: Objection to someone and come and get you.

THE COURT: Overruled.

BY MR. GIBBONS:

Q Ma'am?

(p. 91) A I don't know.

Q Well do you recall when you and I had an interview here prior to coming down to court? Do you remember that?

A Yes.

Q And I asked you questions and you talked to me, right?

A Yes.

Q And I asked you about what had happened during July, didn't I?

A Yes.

Q And you talked to me, right?

A Yes.

Q After that I asked you if you were afraid, didn't I?

A Yes.

Q And you told me that if you testified against this defendant that he would come after you and that you

were scared of him and that he'd come and get you and that if he didn't somebody else would?

A I didn't say if I testified against him.

Q You said you were afraid that he might come and get you, didn't you? Didn't you tell me that?

A Not if I testified against him.

(p. 92) Q What did you tell me, ma'am? Tell me what you told me.

A I just told you I was afraid of him when he gets mad.

MR. GIBBONS: That's all I have.

THE COURT: Miss Curran.

MS. CURRAN: Thank you, Judge.

MR. GIBBONS: Judge I just have one other thing if I may.

Q Since July 26th when the defendant got charged these defense lawyers have also come and talked to you, haven't they?

A Yes. I've talked to them.

Q Mr. Reilley and this lawyer right here, Miss Curran?

A Yes, I talked to Miss Curran.

Q And they went over what happened, right?

A Yes.

Q And at that time they typed up an affidavit and had you sign an affidavit, right?

A. Yes.

MR. GIBBONS: By the way at that time that you signed the affidavit - Judge, I don't know where we're at in terms of exhibits, but I will identify (p. 93) this as People's Exhibit Number 1.

THE COURT: You may mark it People's respondents.

MR. GIBBONS: Respondent's.

Q Do you recognize that exhibit?

A Yes.

Q Is that a copy of the affidavit that you signed?

A Yes.

Q When you signed that affidavit in there it says "I had neither apparent or actual authority to permit the police to enter the defendant's apartment," does it.

MS. CURRAN: I'm going to object to this.

THE COURT: Sustained.

MS. CURRAN: It's hearsay.

BY MR. GIBBONS:

Q Ma'am, do you know the difference between actual and apparent authority?

MS. CURRAN: Objection, Judge.

THE COURT: I think this is anticipatory, Mr. Gibbons. Maybe when Miss Curran finishes her redirect examination maybe that line of questioning would be

proper but at this point it's improper. It's just hearsay. Has no probative value at this point.

(p. 94) MR. GIBBONS: Yes, Your Honor. I have nothing further.

THE COURT: Go ahead, Miss Curran.

REDIRECT EXAMINATION

BY MS. CURRAN:

Q Miss Fischer, you testified that when you moved out from Mr. Rodriguez on July 1 that you left various items such as a stove and refrigerator and some dishes at Mr. Rodriguez' house, isn't that right?

A Yes.

Q Now and you moved into your mother's house on July 1, isn't that right?

A Yes.

Q Did your mother have a stove?

A Yes.

Q Did your mother have a refrigerator?

A Yes.

MR. GIBBONS: Objection, relevance.

THE COURT: Overruled.

BY MS. CURRAN:

Q Did your mother have a refrigerator?

A Yes.

Q Did your mother have dishes?

A Yes.

(p. 95) Q And when you moved into your mother's house where did your two little girls sleep?

A On beds that my mother had.

Q Did they each have their own bed?

A Yes.

Q And where did you sleep?

A I slept on the couch.

Q Now when you were living with Mr. Rodriguez you did not have your own bed, isn't that right?

A Right.

Q Now when you moved on July 1, 1985 did you have access to a moving van or a truck of any sort?

MR. GIBBONS: Objection.

THE COURT: Overruled. You may answer.

BY MS. CURRAN:

Q I'll repeat the question for you. On July 1, 1985 when you moved out did you have access to a moving van or a moving truck of any kind?

A No.

Q And when you moved out Mr. Rodriguez did not have a stove of his own, isn't that correct?

A Yes.

Q And he did not have a refrigerator of his own, isn't that correct?

(p. 96) A Yes.

Q How did you get from 3519 South California to your mother's home on Wolcott on July 1, 1985?

A My friend drove me.

Q And what did she drive you in?

A Her car.

Q Was it an usual vehicle or was it a van?

A It was a car. Cadillac.

Q A Cadillac?

A Yes.

Q Now Miss Fischer, you and I have talked several times about their case, isn't that right?

A Yes.

Q And you came to my office on December 9, 1985, isn't that right?

A Yes.

Q And we talked about what happened that led to these charges, isn't that right?

A Yes.

Q And I always - I told you on December 9, 1985 that I anticipated you being a witness in this matter, isn't that right?

A Yes.

MR. GIBBONS: Judge, I would just object as to (p. 97) before you left the apartment?

MS. CURRAN: I'd like to know when.

MR. GIBBONS: On July 26th when you left.

A No.

Q How did you get out of the apartment?

A He let me out.

Q You had the key, is that correct?

A Yes. He had a couple sets of keys.

Q Why did you take the key then?

A Because in case he ever did that again, had me locked in I would have the key.

Q So that you could get back in, right? Isn't that correct?

A No. So I could get out if I was ever in.

MR. GIBBONS: I see. Okay. Thank you.

THE COURT: Just a couple of quick questions.

EXAMINATION

BY THE COURT:

Q Was your name on a lease in that apartment?

A No.

Q During July of 1985?

A No.

Q Did you ever contribute monetarily to any rent payments during that time June, July of 1985?

(p. 98) A No.

Q He always paid the rent?

A Yes.

Q A hundred percent of the rent?

A When I wasn't living there?

Q In July of 1985 and including June of 1985 did you make any payment directly or indirectly toward the rent?

A In June when I was living there.

Q And what was it you did in terms of rental payment for the June, 1985 rent?

A Well I never gave him money. It was just like my check we just used for whatever bills or groceries.

Q The July rent was due when? In June? When was the rent due?

A On the first of the month.

Q Did you make a contribution at all in the month of June of 1985 toward the July rent which was due on July 1, the first of the month?

A No.

THE COURT: Miss Curran, any questions?

MS. CURRAN: Nothing further. No, Judge.

MR. GIBBONS: Nothing further, Judge.

(p. 99) THE COURT: All right. Thank you. You are excused.

I do have just one other question.

Q During July of 1985 did you ever invite any of your friends, like the girlfriend you mentioned earlier in your testimony, to the apartment on California without the defendant being there?

A No.

THE COURT: Do you understand my question?

A Yes. I only went there to visit him.

THE COURT: Did you ever have any of your friends over while he wasn't there?

A No.

THE COURT: In July of 1985?

A No.

THE COURT: All right. Thank you. You may step down.

MS. CURRAN: Judge, if I may have one more on that.

THE COURT: Go ahead.

MS. CURRAN:

Q Miss Fischer, in July of 1985 did you ever go over to Mr. Rodriguez' apartment when he was not home?

A No.

(p. 100) MS. CURRAN: That's all for me, Judge.

THE COURT: Mr. Gibbons.

MR. GIBBONS: Nothing further, Judge.

THE COURT: Thank you. You may step down.

(Witness excused.)

THE COURT: Miss Curran, any further witnesses?

MS. CURRAN: No, Your Honor. I have nothing left but argument.

THE COURT: Mr. Gibbons.

MR. GIBBONS: Judge, we have nothing further. No other evidence to present at this time.

THE COURT: Both sides rest on the motion?

MR. GIBBONS: Yes.

MS. CURRAN: Yes, Judge.

* * *

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE)
STATE OF ILLINOIS,)
VS) 85 C 10942
) Charge: Man. del.
EDWARD RODRIGUEZ) Cont. Sub.)

(Filed Dec 9, 1986)

REPORT OF PROCEEDINGS had at the hearing of
above-entitled cause, before the Honorable James M.
Schreier, Judge of said court on the 17th day of September, 1986.

PRESENT:

HON. RICHARD M. DALEY,
State's Attorney of Cook County, by
MR. THOMAS GIBBONS,
Assistant State's Attorney,
appeared for the People;
MS. CHRIS KERNS,
appeared for the Defendant;

* * *

(p. 138) THE COURT: Thank you, Mr. Gibbons.

Both arguments were very good in this case. In terms of the officers' relying on the apparent authority theory, with the support of People versus Adams, an out of state case, can be instructive if there is no controlling Illinois case. And there does seem to be a controlling (p. 139) Illinois case in People versus Miller.

What the Illinois reviewing courts would decide today based on the United State's Supreme Court cases cited by the State holds some doubt, leaves the question perhaps somewhat open, a crack in the door. But I think I am obliged to follow the present situation in Illinois which would not allow for police to act on the apparent authority of the person in allowing the search of an apartment, the person in this case being Gayle Fisher. Maybe that will change. It might change tomorrow.

The present state of the law does not allow for it and Adams can only be instructive and I think can only really be acted on and adopted by a reviewing court and not by the trial court, given the fact that there are Illinois reviewing court opinions on the subject.

Secondly, the actual authority test is a question, has points on both sides, on balance. I think that Gayle Fisher did not have actual authority to permit the search. And again, on balance and weighing the factors on both sides, the test is, I think, pretty well stated in *People versus Posey*, 9 Il. Ap. 3d, 9 Il. Ap. 3d, 943, wherein they cite *United States versus Madlock*; indicating common authority to consent rests on mutual property by persons generally having joint access or control for most purposes.

(p. 140) So that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed their place - that one of their number might permit the common area to be searched; *Madlock*, U.S. 116 at 164.

In *Posey*, parenthetically, that was a situation where one of the main factors that the Illinois Appellate Court

relied on in determining that a co-inhabitant had authority to permit the FBI to search a motel room was that the female who allowed the search had no other residence in the Dallas area. Her exclusive residence - page 949 - her exclusive residence was the motel. And that's contrary to the facts in this case.

On Balance, I think some of the controlling factors which would disallow Gayle Fisher from allowing the police to search are, she was not a usual resident, let alone an exclusive resident at the California apartment. She was, indeed, a rather infrequent visitor or resident or guest or invitee. She was not on the lease and did not contribute to the rent.

The key question, I think is neutralized. I don't know what to think. She was substantially impeached as Mr. Gibbons points out at the preliminary hearing. But the fact that she said she had permission to have the key was only a (p. 141) prior inconsistent statement. It was not substantial evidence.

The testimony in the cause, though, was to me negated by the impeachment at the preliminary hearing. I don't know whether she got the key in the way she described or simply was given the key by Rodriguez. I don't know on the key.

Also, I think it is significant that Gayle Fisher apparently was not there when the Defendant was not there. She did not have access to the apartment without the Defendant being there as a guest who only has access to a place when his host was there.

And she apparently was not allowed, according to her testimony, to invite other people, friends or acquaintances there on her own. The fact that she testified she took the clothes with her is significant. And though she left other heavier articles behind, including things like dishes or china which she said she left behind as well, in addition to the clothes, she most importantly too [sic] her children with her.

And I think that also weighs the fact that she was not a usual resident again, let alone, an exclusive resident at the California apartment.

On balance, weighing factors contrary to and in (p. 142) support of, I think on balance, she did not have the right or control over that apartment to allow the police entry, allow them to search, there being no exigent circumstances that would afford an exception to Peyton versus New York.

The motion to suppress must lie. And the evidence is suppressed. The motion to suppress evidence, sustained.

I invite the State to make new law, which I think would be new law in terms of the apparent authority, or to review my deciding the balancing factors if they so desire.

MR. GIBBONS: Judge, could we have a check date on this.

THE COURT: Yes.

Mr. Gibbons, how long do you think it will take you to review it?

MR. GIBBONS: About 3 weeks. We have to get at least one more transcript. My supervisor would want to read over the testimony which was heard.

THE COURT: If he is not a judge himself by that time. Three weeks, that should be nought time.

MR. GIBBONS: Will that be by agreement?

MS. KERNS: Yes.

THE COURT: By agreement, 10-7-86 to determine whether or not the State will take an appeal.

(Said proceedings adjourned, to (p. 143) resume 10-7-86).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

vs.

EDWARD RODRIGUEZ,

Defendant-Appellee.

ORDER

The defendant, Edward Rodriguez, was arrested on July 26, 1985, and charged with possession of a controlled substance with the intent to deliver. He was charged on the basis of certain items of physical evidence seized during a warrantless search of his apartment that was conducted pursuant to the consent of a third-party. The trial court granted defendant's motion to quash his arrest and suppress evidence, holding that the party who consented to the entry into defendant's apartment was without authority to do so. The State appeals from this order questioning whether consent to enter was properly given.

The trial court heard defendant's motion to suppress evidence on the grounds that the party who consented did not have the authority to consent because she was not living at defendant's apartment at the time that she consented to the entry. At the hearing, Officer James Entress testified that on July 26, 1985, at about 2:30 p.m. he and

his partner, Officer Ricky Gutierrez, received a call from Officer Tenza asking for assistance at a residence located at 3554 South Wolcott. Upon arriving, Officer Entress had a conversation with Gale Fisher. Also present during this conversation were Officer Tenza, Officer Gutierrez, and Dorothy Jackson (Fisher's mother). Fisher told Officer Entress that earlier in the day defendant had beaten her at their apartment at 3519 South California and that she wanted to make a complaint. She also indicated that she had been living at that apartment, that her clothes and furniture were in that apartment, that defendant was presently asleep there, and that she had a key to the apartment and would let the officers enter to arrest defendant. During direct examination, Officer Entress acknowledged that he had testified at a preliminary hearing that Fisher had told him that she used to live at the apartment on South California. However, he went on to say that it was his impression that she was still living there at the time she agreed to let them into the apartment. Officer Entress testified that during his conversation with Fisher he told her that they would only arrest defendant if Fisher was certain that she wanted to press charges against him, and that she seemed hesitant about signing a complaint. Having recalled a conversation with someone a year earlier concerning the involvement of an individual named Edward Rodriguez with narcotics, Officer Entress asked Fisher if defendant was involved with narcotics and Fisher would not respond to that question. Officer Entress testified that he, Officer Gutierrez, Fisher and her mother proceeded to the apartment on South California. Fisher opened the door with her key and allowed the officers to enter. Officer Entress first entered

the living room where he observed containers of a substance he believed to be cocaine and drug paraphernalia including pipes and scales. He then proceeded to the bedroom where he observed defendant sleeping on a bed. In the course of waking defendant, Officer Entress saw two open briefcases at the side of the bed that contained a white substance that he believed to be cocaine. Defendant was subsequently arrested. On cross-examination, Officer Entress testified that Fisher used the term "our" and "their" when referring to the apartment on South California.

Dorothy Jackson testified that on July 1, 1985, she drove her daughter to the apartment on South California at the latter's request so that she could remove her clothes from the apartment. She removed several bags of clothing and left behind her stove, refrigerator and some furniture. Ms. Jackson testified that her daughter told her that she was staying with her because defendant wanted one of their two children toilet trained. She stated that since there was no agreement that Fisher and the children would stay with the witness, Fisher would have to return to her apartment on South California after the child was trained. According to Ms. Jackson, her daughter and her children stayed with Jackson from July 1 through July 26, 1985. During that time Fisher visited defendant and, on approximately two or three occasions, spent the night at his apartment. She also stated that the apartment on South California was Ms. Fisher's home. In the afternoon of July 26, Fisher went to Ms. Jackson's house and told her that defendant had beaten her, whereupon Ms. Jackson telephoned the police and Officer Tenza arrived a few minutes later.

Fisher testified that she lived with defendant at the apartment on South California from December 1984 through June 1985, and that she moved in with her mother on July 1, 1985. When she moved in with her mother, she left the key at defendant's apartment. She stated that she did not have a key to defendant's apartment from July 1 to July 26 and that defendant would let her into the apartment when she went to visit him during that time. She did take a key from defendant's dresser on July 26, after she and defendant had argued. During July 1985 she never had any friends at the apartment on South California, she only went there to visit defendant, and she never went there when defendant was not in the apartment. According to Fisher, she did not remove her stove, refrigerator and furniture that her name was not on lease and that defendant always paid the rent on the apartment. Fisher stated that although she did tell Officer Entress that she had a key to the apartment and agreed to let him inside, she also indicated that she did so because the police told her that that is what she had to do if she wanted to press charges. She denied telling Officer Entress on July 26 that she was living in the apartment on South California.

Our review of the trial court's decision to grant defendant's motion to suppress, recognizes that its ruling will not be set aside unless clearly erroneous. (*People v. White* (1987), 117 Ill. 2d 194, 512 N.E.2d 677.) We note at the outset that this case involves a consent to enter and not a consent to search, and that case law regarding third party consent commonly involves consent to search. However, the concept of consent to search is fundamentally intertwined with the concept of consent to enter

since the validity of a warrantless seizure of evidence in plain view depends on the validity of the entry by the officers seizing the evidence. Therefore, the application of that case law to the instant case is both proper and relevant. In determining whether Fisher had the authority to consent to the warrantless search of defendant's apartment, we are guided by the rule set forth in *United States v. Matlock*, (1974), 415 U.S. 164, 171, 39 L.Ed.2d 242, 94 S.Ct. 988, which involved a consent to search. In that case, the United States Supreme Court ruled that "when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other significant relationship to the premises or effect sought to be inspected." The Supreme Court explained the term "common authority" as follows:

"Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third-party consent does not rest upon the law of property, * * * but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed that risk that one of their number might permit the common area to be searched." *United States v. Matlock*, (1974), 415 U.S. 164, 171, n.7.

The Illinois Supreme Court adopted this common authority doctrine for cases involving third-party consent in

People v. Stacey (1974), 58 Ill. 2d 83, 317 N.E.2d 24. In that case the defendant's wife who was jointly occupying a house with the defendant, allowed police to remove a shirt from defendant's dresser drawer that was located in their bedroom. The court concluded that the mere fact that the defendant alone may have used a dresser drawer while his wife may have used another did not indicate that the wife was denied the mutual use, access to or control of the drawer.

The application of this doctrine requires a determination as to whether the consenting party had sufficient common authority to consent to the entry of the premises where the evidence was found in plain view. (*People v. Callaway*, (1988), 167 Ill. App. 3d 872, 522 N.E.2d 337); *People v. Posey* (1981), 99 Ill. App. 3d 943, 426 N.E.2d 209.) The third-party consent to enter must be made from a person who has control over the premises. (*People v. Daugherty* (1987), 161 Ill. App. 3d 394, 514 N.E.2d 228.) In reviewing the record in the instant case, we note that the trial court properly rejected the State's contention that Fisher had the apparent authority to consent. This conclusion is consistent with prior Illinois cases rejecting the argument that warrantless entries and searches may be upheld if the party who consented to the entry had apparent authority to do so but lacked actual authority. (*People v. Vought* (1988), 174 Ill. App. 3d 563, 528 N.E.2d 1095); *People v. Bochniak* (1981), 93 Ill. App. 3d 575, 417 N.E.2d 722. We also agreed with the trial court's finding that Fisher lacked sufficient authority to justify the police action because under the common authority doctrine set out in *Matlock* her consent was not valid. In reaching its determination the trial court mentioned the following

factors established by the evidence as controlling: (1) Ms. Fisher's name was not on the lease and she did not contribute to the rent; (2) defendant's apartment was not her exclusive or even her usual place of residence, rather, she was an infrequent visitor, guest or invitee; (3) she did not have access to the apartment when defendant was not there and, like a guest, she only had access when defendant was present; (4) she never brought people over to the apartment; and (5) she moved her clothes, and more importantly, her children to her mother's residence. All of these factors indicate that Fisher did not have the common authority over the defendant's apartment that was necessary to make her consent to enter valid. The fact that the evidence seized was in plain view does not change the outcome of this case because the plain view doctrine is dependent upon an original lawful entry (*People v. Patrick* (1981), 93 Ill. App. 3d 830, 417 N.E.2d 1056), and we have held the evidence does not contravene the conclusion that the original entry was unlawful. Therefore, the trial court's decision to grant defendant's motion to suppress was proper.

For the reasons set forth above, the judgment of the circuit court is affirmed.

Judgement affirmed.

FREEMAN, P.J., with MCNAMARA and WHITE, JJ., concurring.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

April 5, 1989

Hon. Richard M. Daley
State's Attorney, Criminal Appeals Div.
309 Richard J. Daley Center
Chicago, IL 60602

No. 68295 - People State of Illinois, petitioner, v. Edward Rodriguez, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 27, 1989.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 30, 1989

Ms. Inge Fryklund
Assistant State's Attorney
Rm. 309 Richard Daley Center
Chicago, IL 60602

Re: Illinois,
v. Edward Rodriguez
No. 88-2018

Dear Ms. Fryklund:

The Court today entered the following order in the
above entitled case:

The petition for a writ of certiorari is granted.

Very truly yours,

/s/ Joseph F. Spaniol, Jr.
Joseph F. Spaniol, Jr., Clerk
